

Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
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Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Rappahannock Regional Solid Waste Management Board
FOR
R-Board Sanitary Landfill
VWP General Permit Tracking No. WP4-20-0193**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and the Rappahannock Regional Solid Waste Management Board, regarding the R-Board Sanitary Landfill, for the purpose of resolving certain violations of State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" or "Landfill" means the R-Board Sanitary Landfill, located at 489 Eskimo Hill Road in Stafford County, Virginia. The Facility is a sanitary landfill for citizens of Stafford County and the City of Fredericksburg that is owned and operated by "R-Board."
5. "Fill" means replacing portions of surface water with upland, or changing the bottom elevation of surface water for any purpose, by placement of any pollutant or material including but not limited to rock, sand, earth, and man-made materials and debris. 9 VAC 25-210-10.
6. "Fill Material" means any pollutant which replaces portions of surface water with dry land or which changes the bottom elevation of a surface water for any purpose. 9 VAC 25-210-10.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
10. "Permit" or "Virginia Water Protection Permit" means an individual or general permit issued under Va. Code § 62.1-44.15:20 that authorizes activities otherwise unlawful under Va. Code § 62.1-44.5 or otherwise serves as the Commonwealth's certification under § 401 of the federal Clean Water Act (33 United States Code ("USC") § 1344.
11. "R-Board" means the Rappahannock Regional Solid Waste Management Board, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.*, comprised of representatives from Stafford County and the City of Fredericksburg. "R-Board" is a "person" within the meaning of Va. Code § 62.1-44.3.
12. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
13. "Site" or "Project" means the approximately 30-acre construction project to expand the existing Landfill with two additional cells.
14. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
15. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.

16. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
17. "Va. Code" means the Code of Virginia (1950), as amended.
18. "VAC" means the Virginia Administrative Code.
19. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. R-Board operates the Facility, which is a sanitary landfill, and R-Board is the permittee for the landfill expansion construction Project.
2. Virginia Water Protection (VWP) General Permit (GP) Tracking No. WP4-20-0193 was authorized on May 22, 2020, authorizing total permanent impacts to 0.05 acre of surface waters at the Site, consisting of 0.02 acre of palustrine emergent wetland and 387 linear feet of stream channel.
3. A previous VWP GP Permit coverage was issued for the expansion Project on August 25, 2009, which authorized total permanent impacts to 0.79 acre of surface waters at the Site, consisting of 0.73 acre of palustrine forested wetland and 1,059 linear feet of stream channel.
4. On August 12, 2020, DEQ received notification that at least 900 linear feet of stream channel had been impacted from the deposition of fill material as a result of erosion and sediment control failures.
5. DEQ conducted an inspection of the Site on August 17, 2020, and confirmed the presence of sediment deposits in surface waters not authorized by the R-Board's VWP Permit.
6. As documented in the August 31, 2020, report submitted to DEQ, R-Board had the final surface water impacts from the sedimentation surveyed to be 0.21 acre of palustrine forested wetland, 0.01 acre of palustrine scrub-shrub wetland, 1.28 acre of palustrine emergent wetland, and 4,628 linear feet of stream channel.
7. Part III.R of VWP GP No. WP4-20-0193 states that, "Except in compliance with this VWP general permit, it shall be unlawful for the permittee to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical, or biological

properties of state waters and make them detrimental to the public health, to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions.”

8. Additionally, Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the filling of surface waters without a Permit issued by the Director. The surface water impacts described above in Paragraph C(4) through C(6) are not authorized under VWP GP Tracking No. WP4-20-0193 and R-Board does not have a Permit for the impacts.
9. On August 31, 2020, DEQ issued a Notice of Violation (NOV No. 2008-001530) to R-Board.
10. On September 8, 2020, R-Board submitted via email a preliminary corrective action plan (CAP) to DEQ and on September 15, 2020, DEQ staff had a conference call with representatives of R-Board to discuss the NOV, R-Board’s planned corrective actions, and enforcement proceedings.
11. On September 22, 2020, DEQ received a written response to the NOV. The NOV response included documentation of corrective measures taken by R-Board to re-establish and improve erosion and sediment control measures at the Site.
12. October 21, 2020, R-Board submitted a CAP to DEQ for review. The CAP proposed sediment removal and restoration for all impacted surface waters, with a contingency to purchase mitigation credits if sediment could not be successfully removed and/or if the success criteria specified in the CAP for restoration monitoring are not adequately achieved.
13. DEQ approved the CAP via email on October 27, 2020.
14. Based on the August 12, 2020, notification of unauthorized impacts, DEQ’s inspection of the Site on August 17, 2020, the sediment release report submitted to DEQ on August 31, 2020, the NOV issued on August 31, 2020, the conference call between DEQ and representatives of R-Board on September 15, 2020, R-Board’s NOV reply submitted September 22, 2020, the CAP submitted to DEQ on October 21, 2020, and documentation/associated files and related correspondence between DEQ and representatives of R-Board, the Board concludes that R-Board has violated Part III.R of VWP GP No. WP4-20-0193, Va. Code § 62.1-44.15:20, and the Regulations at 9 VAC 25-210-50 for unauthorized impacts to surface waters as described above in paragraphs C(1) through C(13).
15. On November 5, 2020, R-Board notified DEQ via email that sediment removal activities in compliance with the DEQ-approved CAP would begin later that day in select

locations. On December 18, 2020, R-Board submitted an email update to DEQ, providing information on the CAP progress and presenting an updated/revised plan.

16. In order for R-Board to return to compliance, DEQ staff and representatives of R-Board have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders R-Board, and R-Board agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$39,000** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

R-Board shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, R-Board shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of R-Board for good cause shown by R-Board, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. 2008-001530 dated August 31, 2020. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, R-Board admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. R-Board consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. R-Board declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by R-Board to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. R-Board shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. R-Board shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. R-Board shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will

result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and R-Board.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after R-Board has completed all of the requirements of the Order;
 - b. R-Board petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to R-Board.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve R-Board from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by R-Board and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of R-Board certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind R-Board to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of R-Board.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, R-Board voluntarily agrees to the issuance of this Order.

Consent Order

Rappahannock Regional Solid Waste Management Board; VWP General Permit Tracking No. WP4-20-0193

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And it is so ORDERED this 1st day of July, 2021.



Thomas A. Faha, Regional Director
Department of Environmental Quality

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The Rappahannock Regional Solid Waste Management Board voluntarily agrees to the issuance of this Order.

Date: 4-23-2021 By: J. Buchanan, Director
(Person) (Title)
Rappahannock Regional Solid Waste Management Board

Commonwealth of Virginia

City/County of Stafford

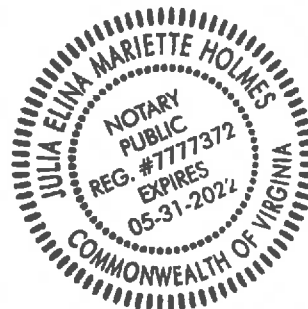
The foregoing document was signed and acknowledged before me this 23 day of April, 2021, by Joe Buchanan who is Director of the Rappahannock Regional Solid Waste Management Board, on behalf of R-Board.

Julia Elina Mariette Holmes
Notary Public

7777372
Registration No.

My commission expires: 05-31-2022

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

R-Board shall:

1. Comply with the terms of the DEQ-approved Corrective Action Plan (CAP) dated October 21, 2020.
2. Unless approved by DEQ in writing at a later date, all items required by the CAP, including monitoring of restored areas, reporting of restoration monitoring to DEQ, and the purchase of any applicable compensatory mitigation credits if required in accordance with the CAP, are to be completed no later than October 21, 2023.
3. Unless otherwise specified in this Order, R-Board shall submit all requirements of Appendix A of this Order to:

Virginia Department of Environmental Quality
Northern Regional Office
Attention: Enforcement
13901 Crown Court
Woodbridge, VA 22193